FILED
JUN 17 1952
CHARLES ELMORE CROPLEY
CLERK

344 US
BUR-CA
13

IN THE

Supreme Court of the United States

October Term, 1952

No. 137

BURLINGTON COUNTY BRIDGE COMMISSION, and HOWARD R. YOCUM, DANIEL LICHTENTHAL, FRED C. NORCROSS, JR., individually and as members of said Commission; THE BOARD OF CHOSEN FREEHOLDERS OF BURLINGTON COUNTY, and LEROY CHURCH, FRANK A. SNOVER, ALBERT C. JONES, STANLEY I. RUSS, CLARENCE G. PRICE, individually and as members of said Board; TACONY-PALMYRA BRIDGE COMPANY, and THE BURLINGTON-BRISTOL BRIDGE COMPANY:—*Petitioners*

v.

ALFRED E. DRISCOLL, Governor of the State of New Jersey, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BENNETT BOSKEY,
American Security Building
Washington 5, D. C.,

and

ROBERT L. HOOD,
Raymond Commerce Building
Newark, New Jersey,

Counsel for Petitioners.

INDEX

	PAGE
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	3
Statement	5
Reasons for granting the writ	10
First. This petition presents questions which are important matters of federal concern, and the decision of the Supreme Court of New Jersey is in conflict with applicable principles of federal law	10
Second. The Supreme Court of New Jersey by its decision has asserted and exercised a rate-making function committed by the Congress exclusively to the Secretary of the Army	11
Third. The Supreme Court of New Jersey, in undertaking to impose a reduced base for the bridge tolls, has imposed a no-profit rule which is directly in conflict with the toll-base criteria prescribed by the Congress	16
Fourth. The Supreme Court of New Jersey has committed serious error by denying the power of Congress to authorize an entity created under State law, such as the Burlington County Bridge Commission, to operate these interstate bridges at a profit	21
Conclusion	26
Appendix A—Pertinent statutes	27
1. Burlington-Bristol Bridge Act	27
2. Amendment to the Burlington-Bristol Bridge Act	30
3. Second amendment to the Burlington-Bristol Bridge Act	30

JUN 2 1954

206526

PAGE

4. Tacony-Palmyra Bridge Act 31

Appendix B—Excerpts from opinion of the Supreme Court of New Jersey 34

Appendix C—Bridge legislation of the Sixty-Ninth Congress 37

I. Other bridge statutes with toll-base criteria containing "adequate return" provisions comparable to those governing the Burlington-Bristol and Tacony-Palmyra Bridges 37

II. Bridge statutes with toll-base criteria substantially the same—except for the very important omission of the "adequate return" provision 38

Authorities Cited

Cases:

Broadway & Newport Bridge Co. v. Commonwealth, 173 Ky. 165 12
California v. Central Pacific R. Co., 127 U. S. 1 23
Chicago etc. Ry. v. Pub. Util. Comm., 274 U. S. 344 18
Chicago, Ind. & L. Ry. Co. v. United States, 219 U. S. 486 15
City of Covington v. Cincinnati, N. & C. Ry. Co., 71 F. (2d) 117 12
City of Leavenworth v. Leavenworth Terminal Railway and Bridge Co., 127 Kan. 474 12
Colorado v. United States, 271 U. S. 153 23
Covington, etc. Bridge Co. v. Kentucky, 154 U. S. 204 11
Covington, etc. Bridge Co. v. Kentucky, 154 U. S. 224 11
Dallemagne v. Moisan, 197 U. S. 169 25
Denver v. Denver Union Water Co., 246 U. S. 178 17
Detroit Intl. Bridge Co. v. American Seed Co., 249 Mich. 289 13
Galveston Electric Co. v. Galveston, 258 U. S. 388 17
Georgia Ry. v. R. R. Comm., 262 U. S. 625 18
Gulf, Colorado etc. Railway v. Hefley, 158 U. S. 98 14
Klein v. City of Louisville, 224 Ky. 624 ..... 13, 24
Latinette v. City of St. Louis, 201 Fed. 676 24
New York v. United States, 257 U. S. 591 23

PAGE

N. Y. Central R. R. v. Hudson County, 227 U. S. 248 14
New York Central R. Co. v. New York & Pa. Co., 271 U. S. 124 14, 15
Northern Pac. Ry. v. North Dakota, 236 U. S. 585 17
Oregon Short Line etc. Ry. v. Skottowe, 162 U. S. 490 23
Pembina Mining Co. v. Pennsylvania, 125 U. S. 181 22
Pennington v. Coxe, 2 Cranch 33 20
Pennsylvania R. Co. v. Illinois Brick Co., 297 U. S. 447 14
People ex rel. Postal T.-C. Co. v. Tax Comrs., 224 N. Y. 167 23
Perkins v. Benguet Mining Co., 342 U. S. 437 22
Public Service Commission v. Bridge Co., 114 W. Va. 291, cert. denied, 292 U. S. 624 11
Public Utilities Commission v. Gas Co., 317 U. S. 456 15
Rice v. Santa Fe Elevator Corp., 331 U. S. 218 15
Seaboard R. Co. v. Daniel, 333 U. S. 118 23
Selective Draft Law Cases, 245 U. S. 366 25
Southern Pacific R. Co. v. United States, 183 U. S. 519 23
Southern Ry. Co. v. Burlington Lumber Co., 225 U. S. 99 14
Southern Railway Co. v. Reid, 222 U. S. 424 13
Southern Ry. Co. v. Reid & Beam, 222 U. S. 444 14
Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 276 18
State of Indiana v. Killigrew, 117 F. 2d 863 25
Stockton v. Baltimore & N. Y. R. Co., 32 Fed. 9, appeal dismissed, 140 U. S. 699 22
Texas v. United States, 292 U. S. 522 15, 23
Texas & Pac. Ry. v. Abilene Cotton Oil Co., 204 U. S. 426 14
United Railways v. West, 280 U. S. 234 18
United States v. Carmack, 329 U. S. 230 22
United States v. Fidelity Trust Co., 222 U. S. 158 18

Statutes:

Act of August 21, 1935 (49 Stat. 670; 33 U.S.C. § 503) 12
Act of March 31, 1952 (Public Law 287, 82nd Congress) 17

PAGE

Bridge Act of 1906 (34 Stat. 84; 33 U.S.C. § 491)..... 4, 5, 12, 13, 14
Burlington-Bristol Bridge Act (44 Stat., Part 2, 588), as amended by 44 Stat., Part 2, 1069, and 45 Stat. 243 ..... 3-4, 12, 16, 19
General Bridge Authority Act of 1946 (60 Stat. 847; 33 U.S.C. § 526)..... 4
National Security Act of 1947 (61 Stat. 507; 5 U.S.C. § 181-1) 4
Public Law 192, Sixty-Ninth Congress (44 Stat., Part 2, 409) 20
Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. § 401)..... 3
Tacony-~~Palmyra~~ Bridge Act (44 Stat., Part 2, 1024) 4, 12, 16, 19
28 U.S.C. § 1257..... 2, 3
New Jersey "Self-Liquidating Bridges Act" (R.S. 27: 19-26 et seq., as amended, New Jersey Statutes Annotated) 4

Other Materials:

40 Cong. Rec. 1715-1720..... 14
H. Rep. 1174, 74th Cong., 1st Sess..... 12
S. Rep. 1128, 74th Cong., 1st Sess..... 12
Part 2, p. 15, of Monograph S. Doc. 10, 77th Cong., 1st Sess. 18
Koenig, "Federal and State Cooperation under the Constitution", (1938) 36 Mich. L. Rev. 752..... 25
Mermin, "Cooperative Federalism", (1947) 57 Yale L.J.1, 13-15 25
Note, "State Control over Interstate Bridges", (1919) 33 Harvard L. Rev. 292..... 11

IN THE

Supreme Court of the United States

October Term, 1952

No. .....

BURLINGTON COUNTY BRIDGE COMMISSION, and HOWARD R. YOCUM, DANIEL LICHTENTHAL, FRED C. NORCROSS, JR., individually and as members of said Commission; THE BOARD OF CHOSEN FREEHOLDERS OF BURLINGTON COUNTY, and LEROY CHURCH, FRANK A. SNOVER, ALBERT C. JONES, STANLEY I. RUSS, CLARENCE G. PRICE, individually and as members of said Board; TACONY-PALMYRA BRIDGE COMPANY, and THE BURLINGTON-BRISTOL BRIDGE COMPANY:—*Petitioners*

v.

ALFRED E. DRISCOLL, Governor of the State of New Jersey, et al.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of New Jersey in the above cause.

OPINIONS BELOW

The opinion of the Superior Court of New Jersey—Chancery Division (R. 394a-432a) is reported at 10 N.J. Super. 545, 77 A. 2d 255. The opinion of the Supreme

Court of New Jersey (R. 2811-2879) is reported at 8 N.J. 433, 86 A. 2d 201.

JURISDICTION

The Supreme Court of New Jersey entered its judgment on January 21, 1952 (R. 2881). A timely petition for rehearing, filed by certain parties other than petitioners (R. 2882-2908), was denied February 11, 1952 (R. 2909). By orders dated April 12, 1952, and May 1, 1952, Mr. Justice Burton extended petitioners' time to file petition for writ of certiorari, to and including June 19, 1952. Jurisdiction of this Court is invoked under 28 U.S.C. § 1257, to review a final judgment of the highest court of New Jersey.

QUESTIONS PRESENTED

The Burlington County Bridge Commission is "a public body corporate and politic" created under New Jersey statutes by the Board of Chosen Freeholders of Burlington County, New Jersey. In 1948 the Bridge Commission acquired from private owners two interstate bridges which cross navigable portions of the Delaware River to connect Pennsylvania and New Jersey. Because of the circumstances under which the bridges were acquired, the Supreme Court of New Jersey has directed an incomplete partial rescission of the transaction. As part of its determination the court directed that the Bridge Commission shall retain title to the two bridges and shall continue to operate them in compliance with applicable statutes.

Both bridges are subject to Acts of Congress governing construction, operation and maintenance. Those Acts of Congress deal specifically with the tolls which may be charged. Despite the provisions of the federal legis-

lation, the Supreme Court of New Jersey has directed that the Bridge Commission shall not operate the bridges at a profit.

Petitioners seek review of this determination. The questions presented are whether the Supreme Court of New Jersey, by denying that profit may be an element in the Bridge Commission's toll charges for these two bridges, has denied a title, right, privilege or immunity existing and claimed under the Constitution or statutes of, or an authority exercised under, the United States. 28 U.S.C. § 1257. This is to be considered from three aspects—namely, whether the Supreme Court of New Jersey, in undertaking to impose a reduced base for the bridge tolls despite the provisions of the pertinent Acts of Congress on which petitioners rely,

(1) has asserted and exercised a rate-making function committed by the Congress exclusively to the Secretary of the Army;

(2) has imposed a no-profit rule which is directly in conflict with the toll-base criteria prescribed by the Congress; or

(3) has denied the power of Congress to authorize an entity created under State law, such as the Burlington County Bridge Commission, to operate these interstate bridges at a profit.

STATUTES INVOLVED

Section 9 of the Act of March 3, 1899 provides that it shall not be lawful to construct a bridge over any navigable water of the United States until the consent of Congress shall have been obtained (with an exception not relevant to the Delaware River) (30 Stat. 1151; 33 U.S.C. § 401).

Construction, operation and maintenance of the Burlington-Bristol Bridge is governed by the Act of Congress of May 21, 1926 (44 Stat., Part 2, 588), as amended

in certain minor respects by the Act of February 10, 1927 (44 Stat., Part 2, 1069) and the Act of March 7, 1928 (45 Stat. 243). Construction, operation and maintenance of the Tacony-Palmyra Bridge is governed by the Act of Congress of January 25, 1927 (44 Stat., Part 2, 1024). These statutes, which are set forth in Appendix A, among other things place both bridges under the provisions of the Bridge Act of 1906 (34 Stat. 84; 33 U.S.C. § 491). Section 4 of the Bridge Act of 1906 provides in part (33 U.S.C. § 494):

> "If tolls shall be charged for the transit over any bridge constructed under the provisions of this Act, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates and shall be the rates demanded and received for such transit." [1]

The Burlington County Bridge Commission was created pursuant to the New Jersey "Self-Liquidating Bridges Act" (R.S. 27: 19-26 et seq., as amended, New Jersey Statutes Annotated), which authorizes the board of chosen freeholders of a county to create a bridge commission, and which contains provisions relating to the authority of a bridge commission so created. It also provides that such a bridge commission "shall be a public body corporate and politic of the state".

---

[1] In the General Bridge Authority Act of 1946 there is a similar provision governing the tolls for interstate bridges (over navigable waters of the United States) constructed after August 2, 1946. 60 Stat. 847, 849; 33 U.S.C. §§ 526, 530.

The functions of the Secretary of War under the various federal bridge enactments became functions of the Secretary of the Army by virtue of Section 205 of the National Security Act of 1947. 61 Stat. 507; 5 U.S.C. § 181-1.

STATEMENT

The present suit was instituted by the Governor and the Attorney General of the State of New Jersey, by an information and complaint filed December 3, 1948 in the Superior Court of New Jersey (R. 1a-96a). Its purpose was to challenge and set aside certain transactions concluded in October 1948, whereby the Burlington County Bridge Commission had acquired from private owners two interstate toll bridges (the Burlington-Bristol Bridge and the Tacony-Palmyra Bridge) which cross navigable portions of the Delaware River to connect Pennsylvania and New Jersey. Petitioners were among the numerous parties named as defendants in the suit.

The two bridges were constructed by private interests pursuant to statutes enacted by the Sixty-Ninth Congress (see Appendix A). The statutes granted the consent of Congress to certain named parties, and their assigns, to construct, maintain and operate the bridges, in accordance with the provisions of the Bridge Act of 1906, and subject to the conditions and limitations contained in the two acts themselves. Substantially identical in form, both statutes provide in Section 3 that the bridge owner, and assigns, "is hereby authorized to fix and charge tolls for transit over such bridge, and the rates of toll so fixed shall be the legal rates until changed by the Secretary of War under the authority contained in the Act of March 23, 1906". In Section 4 they provide that, after completion of the bridge, the State of New Jersey or Pennsylvania or their political subdivisions adjoining the bridge (or two or more of them jointly) may acquire and take over the bridge by purchase or by condemnation, a restrictive valuation formula being specified in the event that condemnation occurs more than twenty years after completion as determined by the Secretary of War.[2] If

[2] It does not appear that the Secretary of War has ever formally certified the date of completion of either of the bridges.

the bridge is taken over and acquired by a State or political subdivision under Section 4, Section 5 authorizes tolls to be charged thereafter and lays down criteria for such tolls as may be charged. The criteria for the Burlington-Bristol Bridge are that:

> "in fixing the rates of toll to be charged for the use of such bridge, the same shall be so adjusted as to provide as far as possible a sufficient fund to pay for the cost of maintaining, repairing, and operating the bridge and its approaches, *to pay an adequate return on the cost thereof,* and to provide a sinking fund sufficient to amortize the amount paid therefor within a period of not to exceed thirty years from the date of acquiring the same. After a sinking fund sufficient to pay the cost of acquiring such bridge and its approaches shall have been provided, the bridge shall thereafter be maintained and operated free of tolls or the rates of toll shall be so adjusted as to provide a fund not to exceed the amount necessary for the proper care, repair, maintenance, and operation of the bridge and its approaches." (italics added)

An almost identical provision governs the Tacony-Palmyra Bridge. In the final section of the two Acts the Congress conferred a full right "to sell, assign, transfer, and mortgage all the rights, powers, and privileges conferred by this Act", with the transferee being "hereby authorized and empowered to exercise the same as fully as though conferred herein directly."

In 1931 and 1929 respectively, the bridges were opened for interstate traffic and were operated as toll bridges by their corporate owners, the Burlington-Bristol Bridge Company and the Tacony-Palmyra Bridge Company.

In the fall of 1948 a proposal was made concerning possible sale of the two bridges to a public body of Burlington County, New Jersey. On October 22, 1948, the Board of Chosen Freeholders of Burlington County, acting pursuant to New Jersey statutes, formally created

the Burlington County Bridge Commission. Later that day and evening, in a rather complicated closing transaction, the Burlington County Bridge Commission acquired the two bridges. Without going into full detail, it may be said that this closing included:

(a) Acquisition, by Burlington-Bristol Bridge Company, of the stock of Tacony-Palmyra Bridge Company.
(b) Subsequent acquisition, by the Burlington County Bridge Commission, of the stock of Burlington-Bristol Bridge Company, as a result of which the Bridge Commission obtained ownership of the two bridges.
(c) Issuance by the Burlington County Bridge Commission of $12,400,000 of revenue bonds, payable solely out of, and secured solely by, the tolls of the two bridges—these bonds being purchased by respondents Ketcham and Nongard, who resold most of the bonds to the other members of a bond syndicate.
(d) Payment of $12,000,000 (out of the bond proceeds) by the Bridge Commission for the two bridges.
(e) Retention of the remaining $400,000 (out of the bond proceeds) by the Bridge Commission as working capital.

The Freeholders and the Bridge Commissioners knew the transaction would result in a profit to the sellers. But their approval of this transaction, according to their undisputed testimony, was based on their understanding that it would also result in a considerable profit to Burlington County, without risking any funds or pledging any credit of the County.[3] The profit, they understood, would accrue to the Bridge Commission out of the tolls

[3] See the testimony given on this point by the five Freeholders (R. 470a, 510a; 582a; 618a, 622a; 666a-667a; 676a, 682a, 687a-688a) and by the three Bridge Commissioners (R. 747a, 749a, 787a; 822a, 828a; 991a).

collected, since such tolls were to be sufficient "to pay an adequate return on the cost" of the bridges. Indeed, computations of estimated revenue which served as a basis for the discussions included a fund specifically labelled "adequate return" fund (following the terminology in the Acts of Congress) (R. 2618a, 2374a, 2157a). The "adequate return", under the Acts of Congress, would be a part of the toll structure during the period before a sinking fund was built up sufficient to amortize the price of the bridges (R. 199a, 205a-206a, 210a, 211a). The estimates actually considered by the Freeholders and the Bridge Commissioners indicated that during this period (that is, through 1961) a profit of over $4,000,000 would be realized from the tolls (R. 2618a, 470a, 622a, 666a, 701a, 789a, 991a).[4]

The testimony along the foregoing lines was not contradicted. However, at the trial the plaintiffs raised the question whether the Burlington County Bridge Commission was in fact authorized to operate the bridges at a profit, and whether any representations to that effect made to the Freeholders and the Bridge Commissioners had been correct representations (e.g., R. 1766a-1767a, 2160a-2169a). Also at the trial, considerable additional testimony was given, in support of the view that the Bridge Commission's operation of the bridges could be carried on at a profit (e.g., R. 2083a-2085a).

The Superior Court made a final disposition of the case without ruling on this question. Because of various circumstances relating to the way in which the determination had been reached to acquire the bridges at the proffered price of $12,000,000, the court found that the Bridge Commissioners had been derelict in the perfor-

---

[4] Experience has shown that the estimates of revenue made at that time were conservative (R. 2666a). Revenue has considerably exceeded the estimates.

mance of their public duties and that their contracts to purchase the bridges were against public policy and void. The circumstances on which the court relied are discussed in detail in its opinion; they included the haste and secrecy surrounding the transaction and the absence of independent appraisals. As one of the measures to effect a rescission, the court ordered that the Bridge Commission reconvey the bridges to the sellers. Possibly because this meant the bridge operation would no longer have been the Bridge Commission's responsibility, the court did not rule on the question whether under Bridge Commission operation the toll rates might include a profit.

On appeal the Supreme Court of New Jersey found, after examining the history of the transaction, that "by virtue of the wrongful conduct of the freeholders, the bridge commissioners and the members of the selling syndicate", the acquisition of the bridges was effectuated in a manner contrary to public policy and was therefore illegal and voidable. But unlike the trial court, the Supreme Court of New Jersey determined that all holders (except respondents Ketcham and Nongard) of the revenue bonds issued by the Bridge Commission are holders in due course, entitled to enforce the bonds according to their terms. Concluding that total rescission would be inequitable to the bondholders, the Supreme Court of New Jersey determined that the Bridge Commission shall retain title to the bridges, and shall operate them in compliance with applicable statutes. It also determined that, so far as the sellers of the bridges are concerned, the entire transaction shall be rescinded with respect to them, and they shall repay to the Bridge Commission their gross profit of $3,050,347, less credits of about $600,000.

In addition, the Supreme Court of New Jersey expressly considered the question whether the Bridge Commission, which under the decision retains the two inter-

state bridges, may operate these bridges at a profit. It held that the operation cannot be conducted at a profit, despite the provisions of the applicable federal statutes. This is the determination which petitioners urge be reviewed by certiorari. The opinion states on this point that the New Jersey statutes relating to bridge commissions do not include a power to operate bridges for profit, and that the Federal Government cannot grant such a power to an agency of the State which the State itself has not seen fit to grant (see Appendix B, p. 34, infra).

Petitioners contend that the Supreme Court of New Jersey, by denying that profit may be an element in the Bridge Commission's toll charges and thus undertaking to impose a reduced base for the tolls, (1) has asserted and exercised a rate-making function committed by the Congress exclusively to the Secretary of the Army, (2) has imposed a no-profit rule which is directly in conflict with the toll-base criteria prescribed by the Congress, and (3) has denied the power of Congress to authorize an entity created under State law, such as the Burlington County Bridge Commission, to operate these interstate bridges at a profit.

REASONS FOR GRANTING THE WRIT

FIRST. THIS PETITION PRESENTS QUESTIONS WHICH ARE IMPORTANT MATTERS OF FEDERAL CONCERN, AND THE DECISION OF THE SUPREME COURT OF NEW JERSEY IS IN CONFLICT WITH APPLICABLE PRINCIPLES OF FEDERAL LAW.

In ruling on the bridge tolls the Supreme Court of New Jersey made serious departures from established principles of federal law, thereby producing a result that is manifestly inconsistent with the Acts of Congress pertaining to interstate bridges. As will appear from the discussion which follows, the questions presented by the petition are of considerable importance to the Federal Government's discharge of its responsibilities. Definitive review by this Court is needed to protect the federal

power, as actually exercised by the Congress, against successful challenge and encroachment on the part of the States.

SECOND. THE SUPREME COURT OF NEW JERSEY BY ITS DECISION HAS ASSERTED AND EXERCISED A RATE-MAKING FUNCTION COMMITTED BY THE CONGRESS EXCLUSIVELY TO THE SECRETARY OF THE ARMY.

The Supreme Court of New Jersey has exercised a rate-making function by determining that the bridge tolls to be maintained by the Bridge Commission may not include profit as an element. In the light of the federal statutes on which petitioners rely, this was beyond its competence.

Interstate bridges are avenues of interstate commerce. They, and the tolls to be charged for transit over them, are subject to regulation by the Congress in the exercise of its constitutional power over interstate commerce.

The history of interstate bridge toll regulation gives strong emphasis to federal, as opposed to state, control. Federalization was unusually complete even before the Congress had enacted any provisions of a general nature dealing with such tolls. In 1894 this Court determined that, in the absence of Congressional directive as to how interstate bridge tolls should be regulated, under the Commerce Clause this was a subject matter nevertheless requiring uniformity, and that it was beyond the power of a State on one side of the bridge to regulate the tolls. *Covington, etc. Bridge Co.* v. *Kentucky*, 154 U. S. 204 (1894); *Covington, etc. Bridge Co.* v. *Kentucky*, 154 U. S. 224 (1894).[5] Despite some criticism and rejection,[6] the

[5] The opinion expressly left open the possibility that, in the absence of Congressional action, the States on both sides of the bridge might jointly regulate the toll rates.

[6] See Note, "State Control over Interstate Bridges", (1919) 33 Harvard L. Rev. 292; *Public Service Commission* v. *Bridge Co.*, 114 W. Va. 291 (1933), certiorari denied, 292 U.S. 624 (1934).

Covington Bridge doctrine was followed by a number of appellate courts. *City of Leavenworth* v. *Leavenworth Terminal Railway and Bridge Co.*, 127 Kan. 474 (1929); *Broadway & Newport Bridge Co.* v. *Commonwealth*, 173 Ky. 165 (1917); *City of Covington* v. *Cincinnati, N. & C. Ry. Co.*, 71 F. (2d) 117, 120 (C.C.A. 6th, 1934). As recently as 1935 it was treated by the Congress as having continuing vitality.[7]

From the standpoint of the present litigation, however, it is immaterial whether the *Covington Bridge* doctrine would today survive the shifts in constitutional emphasis which have taken place during the past two decades, by virtue of which this Court's decisions have accepted considerable enlargements of the areas where the States may regulate interstate commerce in the absence of affirmative action by the Congress. The present litigation arises not in an area where the Congress has been silent, but in an area where it has taken specific affirmative action. The Bridge Act of 1906 vested in the Secretary of War the authority over bridge toll rates (see page 4, supra); and the legislation of the Sixty-Ninth Congress governing the Burlington-Bristol and Tacony-Palmyra Bridges authorizes the bridge owner to fix and charge tolls, which shall be the legal rates "until changed by the Secretary of War under the authority contained in the Act of March 23, 1906" (see Appendix A, pages 28, 32, infra). The *Covington Bridge* decisions, regardless of whether they would now be reaffirmed by this Court, make clear

---

[7] The Act of August 21, 1935 (49 Stat. 670; 33 U.S.C. §§ 503-507) conferred on the Secretary of War authority to regulate tolls over certain bridges erected before, and hence not subject to, the toll regulation provision in the Bridge Act of 1906. The Committee reports show it was the purpose of the Congress to bring an end to a situation in which such bridges, while recognized under the *Covington Bridge* decisions as being free from State regulation of their tolls, yet had not been specifically subjected to any federal regulation. H. Rep. 1174 and S. Rep. 1128, 74th Cong., 1st Sess.

that, at the time the Congress enacted the legislation pertinent to this case, the subject matter dealt with by the Congress was not one where there had been a long tradition of State regulation; nor were the States being ousted from a jurisdiction over interstate bridge tolls which previously they had lawfully exercised. Thus no historical circumstances exist which might invoke some narrow interpretation bristling with hostility to the action taken by the Congress.

By its legislation the Congress has vested in the Secretary of the Army the exclusive power to review and regulate the tolls for the two bridges involved in the present litigation. This is a principle explicitly upheld by the Supreme Court of Michigan in *Detroit Intl. Bridge Co.* v. *American Seed Co.*, 249 Mich. 289, 299-300 (1930), where the court recognized that under the Bridge Act of 1906 the toll regulation is "under the supervision of the Secretary of War", and that the State may step in only "if the Federal government withdraws its regulation". Compare *Klein* v. *City of Louisville*, 224 Ky. 624, 634 (1928), stating that the Bridge Act of 1906 gave the Secretary of War "supervision over toll rates".

The affirmative exercise of power by the Congress establishes the means, and the only means, by which such interstate bridge tolls are to be regulated, except as the Congress may otherwise prescribe—just as positively as the Interstate Commerce Act vests in the Interstate Commerce Commission the exclusive jurisdiction over the regulation of interstate railroad rates. As this Court stated in *Southern Railway Co.* v. *Reid*, 222 U. S. 424, 442 (1912), a leading case upholding exclusiveness of the authority of the Interstate Commerce Commission over rate regulation, as against action by the States:

> "Congress has taken possession of the field of regulation, with the purpose . . . to keep under the eye

> and control of the Commission the rates charged and the action of the railroad in regard to them, to secure their reasonableness and to secure their impartial application."

Time and again the Court has stricken down attempts by the States, no matter how ingeniously devised, to control or regulate or interfere with the railroad rates which the Congress has placed under the jurisdiction of the Interstate Commerce Commission. *Gulf, Colorado etc. Railway* v. *Hefley*, 158 U. S. 98 (1895); *Texas & Pac. Ry.* v. *Abilene Cotton Oil Co.*, 204 U. S. 426 (1907); *Southern Ry. Co.* v. *Reid & Beam*, 222 U. S. 444 (1912); *Southern Ry. Co.* v. *Burlington Lumber Co.*, 225 U. S. 99 (1912); *N. Y. Central R. R.* v. *Hudson County*, 227 U. S. 248 (1913); *New York Central R. Co.* v. *New York & Pa. Co.*, 271 U. S. 124 (1926); *Pennsylvania R. Co.* v. *Illinois Brick Co.*, 297 U. S. 447 (1936).

The situation of interstate bridge tolls is parallel and the precedents are compelling. Not only is the text of the federal bridge legislation clear in conferring on the Secretary of War the power to regulate the bridge tolls, which under established principles of federal law excludes the power of the States. In addition, the legislative history of the Bridge Act of 1906 shows a deliberate action on the part of the Congress to vest in the Secretary of War the same plenary power over regulation of interstate bridge tolls as the Interstate Commerce Commission possesses over railroad rates.[8]

For these reasons it was beyond the competence of the Supreme Court of New Jersey to impose upon the Bridge Commission a reduced base for tolls. The courts of the State of New Jersey have no more authority to take such

---

[8] See in particular the discussion of the bill in the House at 40 Cong. Rec. 1715-1720.

action than they, or any other State agency, would possess to direct a railroad corporation to eliminate the profit factor from its interstate railroad rates (cases cited above); or to direct a natural gas corporation to lower its rates on natural gas transported and sold in interstate commerce, *Public Utilities Commission* v. *Gas Co.*, 317 U. S. 456 (1943); or to direct a warehouse corporation to reduce the rates of a warehouse subject to the jurisdiction of the Secretary of Agriculture under the United States Warehouse Act, *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218 (1947). In all these situations the action taken by the Congress to vest authority over rates in a federal agency or federal official has been given effect by excluding any subsequent exercise of such authority by the States.

As the cases show, it makes no difference that a State is attempting to exert such authority against an entity organized under its own laws. *New York Central R. Co.* v. *New York & Pa. Co.*, supra; *Rice* v. *Santa Fe Elevator Corp.*, supra; compare *Chicago, Ind. & L. Ry. Co.* v. *United States*, 219 U. S. 486, 497 (1911). "Even explicit charter provisions must yield to the paramount regulatory power of the Congress." *Texas* v. *United States*, 292 U. S. 522, 531 (1934). Similarly, in the present case the State's invasion of a federal rate regulation function could not be justified on the ground that the Bridge Commission was created under the laws of New Jersey.

This Court stated in *New York Central R. Co.* v. *New York and Pa. Co.*, supra, 271 U. S. at 126:

> "The Interstate Commerce Commission has not approved any reduction and therefore it is plain that the State Commission had no authority to intermeddle with the rates that it undertook to cut down. . . . Whether the rates were right, or were wrong as the State Court thinks, they could be changed only in one way."

In the present case no such "intermeddling" with the bridge tolls was within the competence of the State courts.

The question is of importance in the division of responsibility between the States and the Federal Government. It affects not merely the two bridges involved in this case, but interstate bridges generally. The State court has undertaken to invade a sphere of activity which the Congress has reserved to the Federal Government. It is in the public interest that such an encroachment be promptly reviewed by this Court.

THIRD. THE SUPREME COURT OF NEW JERSEY, IN UNDERTAKING TO IMPOSE A REDUCED BASE FOR THE BRIDGE TOLLS, HAS IMPOSED A NO-PROFIT RULE WHICH IS DIRECTLY IN CONFLICT WITH THE TOLL-BASE CRITERIA PRESCRIBED BY THE CONGRESS.

In contemplating the possibility that these two bridges might be acquired by a State or by a local public body, the Sixty-Ninth Congress laid down criteria for the tolls which may be charged in the event of such acquisition (see p. 6, supra; and Appendix A, pp. 28, 32, infra). Under these criteria, any tolls charged are to be adjusted: (1) to provide a sufficient fund for the maintenance, repair and operating costs of the bridge and its approaches; (2) "to pay an adequate return on the cost thereof", and (3) to provide a sinking fund to amortize the amount paid therefor within thirty years from the date of acquisition. The statutes also establish the policy that when such a sinking fund has been provided, the bridges shall thereafter be operated either toll-free or with tolls limited to the amount necessary for proper care, repair, maintenance, and operation. On the face of the statutes it is thus clear that the Congress made provision for an "adequate return" to be earned on the cost of the bridges, during whatever period elapses before the sinking fund

has become sufficient to amortize the amount paid by the public body for the bridges.[9]

The "adequate return" provided for by these statutes plainly enough includes the profit factor which the phrase "adequate return" traditionally connotes.

"Adequate return" was not some mysterious improvisation on the part of the Sixty-Ninth Congress. Rather it represents a legislative utilization of a phrase and a concept used commonly in rate-making matters as a means of referring to level of profit. Abundant illustrations of its prior use for this purpose will be found in opinions of this Court. For example, the opinion written by Mr. Justice Hughes for the Court in *Northern Pac. Ry.* v. *North Dakota*, 236 U. S. 585, 600, 601, 602 (1915), has various references to the question of "adequate" return and "adequacy" of return; the opinion by Mr. Justice Pitney for the Court in *Denver* v. *Denver Union Water Co.*, 246 U. S. 178, 190-191, 194 (1918), speaks of the "right to adequate compensation" and holds that "the return yielded by the ordinance now before us is clearly inadequate". Similar usage will be found in the opinions by Mr. Justice Brandeis for the Court in *Galveston Electric Co.* v. *Galveston*, 258 U. S. 388, 401-402, 403 (1922),

---

[9] A recent Act of Congress (Act of March 31, 1952, Public Law 287, 82nd Congress), expands the authority of the Delaware River Joint Toll Bridge Commission so as to include, among other things, authority to acquire the two bridges involved in this litigation. If such acquisition occurs, the Delaware River Joint Toll Bridge Commission may operate the bridges, and may fix the tolls on a basis of combined operation of two or more bridges. While the toll criteria of the Act of March 31, 1952 do not contain provision for "adequate return", they would become applicable to these two bridges only if the bridges were to be acquired by the Delaware River Joint Toll Bridge Commission; thus there is no question that while the bridges are the property of the Burlington County Bridge Commission, the earlier Acts of Congress specifically providing for "adequate return" remain applicable.

holding a five-cent rate was not proved "inadequate", and in *Georgia Ry.* v. *R. R. Comm.*, 262 U. S. 625, 634 (1923); as well as in the separate opinion of Mr. Justice Brandeis in *Southwestern Bell Telephone Co.* v. *Public Service Commission*, 262 U. S. 276, 289, 296 (1923), where it is stated that "a rate order will not be set aside, unless the evidence compels conviction that a fair-minded board could not have reached the conclusion that the rate would prove adequate".[10]

In this setting of well-known and accepted usage, the Sixty-Ninth Congress certainly was enacting legislation in which the words "adequate return" carried their normal meaning. "The statute does not invite speculation in a new nomenclature, or attempt to reach profounder conceptions than those familiar to the law . . . we presume that it uses familiar legal expressions in their familiar legal sense." *United States* v. *Fidelity Trust Co.*, 222 U. S. 158, 160 (1911). The effect of this bridge legislation enacted by the Sixty-Ninth Congress, therefore, was to include a reasonable profit factor in the toll-base criteria.[11]

Why some of the bridge legislation should have been cast in this form is readily understandable. Through the

---

[10] See also the opinion by Mr. Justice Butler for the Court in *Chicago etc. Ry.* v. *Pub. Util. Comm.*, 274 U.S. 344, 350-351 (1927); and *United Railways* v. *West*, 280 U.S. 234 (1930), both in the Court's opinion by Mr. Justice Sutherland at 249 ("What may be a fair return for one may be inadequate for another, depending upon circumstance, locality and risk") and in the dissenting opinion by Mr. Justice Brandeis at 257 ("We are concerned solely with the adequacy or inadequacy of the return under the guarantees of the federal law").

[11] It should be noted that in 1941 the Attorney General's Committee on Administrative Procedure found that the Secretary of War, in regulating bridge tolls, "practically invariably" allowed a return of 8 per cent. Part 2, p. 15, of Monograph, S. Doc. 10, 77th Cong., 1st Sess.

"adequate return" provision an assurance was conferred by Act of Congress that an acquiring public body might operate the bridges at a reasonable profit until after the sinking fund built up sufficiently to amortize the purchase price. Such an assurance bettered the prospects of the bridge operation and thus supplied obvious additional inducements—inducements first for more rapid investment of private capital, and then for earlier public acquisition which would advance the date of eventual operation on a toll-free or virtually toll-free basis.

In any event, from the statutes themselves the purpose of the Congress to establish the profit criteria for the tolls of these two bridges is unmistakable. And this purpose receives further support and illumination from a consideration of other bridge legislation enacted by the Sixty-Ninth Congress.

The annals of the Sixty-Ninth Congress are crowded with bridge bills, including many specific statutes having the same degree of detail as the Burlington-Bristol and Tacony-Palmyra Bridge Acts on which petitioners rely. Examination of this mass of legislation will show how readily it divides itself into separate categories reflecting meaningful differences of purpose. The two bridges involved in the present litigation are not just two isolated instances where the Congress provided that, upon public acquisition of the bridges, such tolls as are charged shall be adjusted "to pay an adequate return on the cost thereof". Indeed, there are twenty-one additional bridge statutes in which the Sixty-Ninth Congress inserted an identical, or virtually identical, "adequate return" provision (see Appendix C, p. 37, infra). These as a group are to be contrasted sharply with another group of nearly thirty bridge statutes of the Sixty-Ninth Congress which have toll-base criteria substantially the same—except for the very important omission of the "adequate return"

provision (see also Appendix C). A typical example of this sort is set forth in the margin.[12]

The two groups of statutes both were handled by and reported out of a single committee in the House and a single committee in the Senate. Their coexistence, in such massive numbers, precludes any suggestion that this important textual difference was accidental or other than deliberate. It would be hard to find a situation which more aptly fits the time-honored principle described by Chief Justice Marshall in *Pennington* v. *Coxe,* 2 Cranch 33, 59 (1804):

> "Where the legislature distinguishes between different objects, and in imposing a duty on them evidences a will to charge them in different situations, it is not for the courts to beat down these distinctions on the allegation that they are capriciously made, and therefore to be disregarded. It is the duty of the court to discover the intention of the legislature, and to respect that intention. Where the provisions of the two acts are so unlike each other, that the compari-

---

[12] Public Law 192, Sixty-Ninth Congress (44 Stat., Part 2, 409) relating to a bridge across the Ohio River between Steubenville, Ohio and Weirton, W. Va., contains in Section 5 the following provisions:

"If such bridge shall at any time be taken over or acquired as provided in section 4 of this Act and if tolls are charged for the use thereof, in fixing the rates of toll to be charged the same shall be so adjusted as to provide as far as possible a sufficient fund to pay for the cost of maintaining, repairing and operating the bridge and its approaches, and to provide a sinking fund sufficient to amortize the amount paid for such bridge and its approaches within a period of not to exceed twenty years from the date of acquiring the same. After a sinking fund sufficient to pay the cost of acquiring the bridge and its approaches, and any interest that shall accrue on money borrowed for that purpose, shall have been provided, such bridge shall thereafter be maintained and operated free of tolls, or the rates of toll shall be so adjusted as to provide a fund of not to exceed the amount necessary for the proper care, maintenance, and operation of the bridge and its approaches."

son exhibits only a contrast, instead of saying that their opposing regulations were designed to be similar, it would seem much more reasonable to say that the one act exhibits a legislative mind materially variant in the particulars where the difference exists from what is exhibited by the other."

The Supreme Court of New Jersey by its decision in the present case has nevertheless obliterated the distinction established by the Congress between the bridge statutes which include and those which omit the "adequate return" provision. This is a serious frustration of the Congressional pattern. Moreover, it involves a question of interpretation affecting not merely the two bridges in the present litigation, but also the numerous other bridges constructed throughout the country under similar Acts of Congress.

FOURTH. THE SUPREME COURT OF NEW JERSEY HAS COMMITTED SERIOUS ERROR BY DENYING THE POWER OF CONGRESS TO AUTHORIZE AN ENTITY CREATED UNDER STATE LAW, SUCH AS THE BURLINGTON COUNTY BRIDGE COMMISSION, TO OPERATE THESE INTERSTATE BRIDGES AT A PROFIT.

As a starting point for the review they seek in this Court, petitioners accept that (1) the Burlington County Bridge Commission is an entity created under the statutes of New Jersey, (2) the Supreme Court of New Jersey has the power to make authoritative interpretations of New Jersey statutes, and (3) in the present case the Supreme Court of New Jersey authoritatively determined that New Jersey statutes do not in themselves confer authority on the Bridge Commission to operate the bridges at a profit.

What petitioners do contend on this aspect of the case is that those grounds alone would have been wholly inadequate for holding inapplicable the Acts of Congress on which petitioners relied; that, presumably for this reason, the Supreme Court of New Jersey rested its de-

cision on another ground, clearly federal in character; that this federal ground was erroneous in concept and hence in result; and that the error was one of large proportions, justifying review by this Court.

The crux of the determination by the Supreme Court of New Jersey is in the following sentence of its opinion:

> "Quite obviously the Federal Government cannot grant a power to an agency of the State which the State itself has not seen fit to grant." (Appendix B, p. 35, infra.)

This signifies a fundamental misconception concerning the power of the Congress. It ignores settled lines of decision in this Court and in other courts, in which a very different scope is given to the powers of the Congress. To allow the judgment to stand would uphold a decision which would have been decided differently if the Supreme Court of New Jersey were free of this misconception as to federal law. Compare *Perkins v. Benguet Mining Co.*, 342 U. S. 437 (1952).

The grave nature of the error becomes apparent from a consideration of the cases relating to the power of the Congress to invest entities created under the law of a State with powers in addition to, or supplementary to, those which the State has seen fit to grant them. This Congressional power has frequently been discussed in connection with corporations chartered by a State, and the judicial determinations have been unequivocal in sustaining the power of the Congress. A decision rendered by Mr. Justice Bradley on circuit, in *Stockton v. Baltimore & N. Y. R. Co.*, 32 Fed. 9 (C.C.N.J., 1887), appeal dismissed, 140 U.S. 699 (1891), which has been many times referred to with approval,[13] contains this pertinent passage (32 Fed. at 15):

---

[13] E.g., *Pembina Mining Co.* v. *Pennsylvania*, 125 U.S. 181, 186 (1888); *United States* v. *Carmack*, 329 U.S. 230, 240 (1946).

> "In our judgment, if congress itself has the power to construct a bridge across a navigable stream for the furtherance of commerce among the states, it may authorize the same to be done by agents, whether individuals, or a corporation created by itself, or a state corporation already existing and concerned in the enterprise. The objection that congress cannot confer powers on a state corporation is untenable. It has used their agency for carrying on its own purposes from an early period. . . . This, of course, involved duties, and conferred privileges and powers, not contained in their original charter."

This principle is firmly embodied in the decisions of this Court. *California* v. *Central Pacific R. Co.*, 127 U. S. 1, 38, 40-45 (1888); *Oregon Short Line etc. Ry.* v. *Skottowe*, 162 U. S. 490, 494 (1896); *Southern Pacific R. Co.* v. *United States*, 183 U. S. 519, 527 (1902); accord: *People ex rel. Postal T.-C. Co.* v. *Tax Comrs.*, 224 N. Y. 167, 176 (1918). It received recent application in *Seaboard R. Co.* v. *Daniel*, 333 U. S. 118, 126 (1948), where this Court held that the Transportation Act of 1946 authorizes a railroad corporation "to exercise the powers therein granted over and above those bestowed upon it by the state of its creation". Indeed, in the areas which come within the competence of Congress under the Commerce Clause, specific charter limitations imposed by the State of incorporation have been held unavailing to keep rates down below the level prescribed by federal criteria, *New York* v. *United States*, 257 U. S. 591, 601 (1922), since "even explicit charter provisions must yield to the paramount regulatory power of the Congress". *Texas* v. *United States*, 292 U. S. 522, 531 (1934); *Colorado* v. *United States*, 271 U. S. 153, 165 (1926).

The present case falls easily within these well-marked boundaries, and presents issues far simpler in their resolution.

New Jersey has voluntarily authorized the creation of bridge commissions, and in this very litigation the highest court of New Jersey has confirmed the title of the Burlington County Bridge Commission to the two bridges which are subject to the federal legislation. The Supreme Court of New Jersey did not find any provision, nor does any exist, in the applicable New Jersey statutes which prohibits the Bridge Commission from operating the bridges at a profit. Accordingly, there was no obstacle which might have prevented the Bridge Commission from receiving and utilizing this authority conferred by Acts of Congress—except the obstacle of the court's erroneous conclusion as to the lack of Congressional power.

Nor is this power of the Congress diminished or restricted because in the present case the Burlington County Bridge Commission is a body politic as well as corporate. *First*, the decisions of this Court in no way suggest possible merit in any such differentiation. *Second*, the adjudicated cases establish that the Congress, just as it may confer national power upon a corporation holding a charter from the State, may also confer national power upon a municipality or other body politic created under the laws of the State. See *Latinette* v. *City of St. Louis*, 201 Fed. 676 (C.C.A. 7th, 1912); and *Klein* v. *City of Louisville*, 224 Ky. 624, 634-636 (1928), both involving Congressional legislation delegating the federal power of eminent domain. While in those cases it appeared that State legislation had also recognized the municipality's right to use such federal power, the opinions do not rely on this and, indeed, the latter case contains a clear expression by the highest court of Kentucky that in order for the Congressional grant to be effective "it is not essential for the state Legislature to authorize its officers to so act" (224 Ky. at 635). *And third*, refutation would also be found in another principle expressed in a line of

this Court's decisions, of which *Dallemagne* v. *Moisan*, 197 U. S. 169, 174 (1905), is typical:

> "It has long been held that power may be conferred upon a state officer, as such, to execute a duty imposed under an act of Congress, and the officer may execute the same, unless its execution is prohibited by the constitution or legislation of the State."

To the same effect are *State of Indiana* v. *Killigrew*, 117 F. 2d 863, 867-868 (C.C.A. 7th, 1941); and *Selective Draft Law Cases*, 245 U. S. 366, 389 (1918).[14]

The impact of this decision by the Supreme Court of New Jersey is far-reaching. Its application could raise havoc throughout the areas where the Congress discharges its constitutional responsibilities.

Today the Federal Government carries on its activities in fields more widespread and diverse than ever before. This has brought with it a corresponding increase in the need for the Congress to rely on the availability of State-created entities which can serve as the recipients of such federal authority as the Congress determines to confer on them. The decision of the State court totally rejects and disavows the existence of this well-established power of the Congress. It thus rests on a harmful and erroneous principle which, unless promptly corrected, will seriously handicap the Congress in its effectuation of national policies.

---

[14] For additional illustrations of Congressional legislation conferring federal power on State agencies or State officials, see Koenig, "Federal and State Cooperation under the Constitution", (1938) 36 Mich. L. Rev. 752, 772-784; Mermin, "Cooperative Federalism", (1947) 57 Yale L.J. 1, 13-15.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for writ of certiorari should be granted.

BENNETT BOSKEY,
American Security Building
Washington 5, D. C.,
and
ROBERT L. HOOD,
Raymond Commerce Building
Newark, New Jersey,

Counsel for Petitioners.

June 1952.

APPENDIX A

PERTINENT STATUTES

1. **Burlington-Bristol Bridge Act.** The Act of Congress of May 21, 1926 (44 Stat., Part 2, 588), provides as follows:

> Chap. 351.—An Act Granting the consent of Congress for the construction of a bridge across the Delaware River at or near Burlington, New Jersey.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the consent of Congress is hereby granted to Joseph R. Cheesman, and Clifford A. Anderson, their heirs, legal representatives, and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Delaware River, at a point suitable to the interests of navigation, between the city of Burlington, New Jersey, and the city of Bristol, Pennsylvania, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906, and subject to the conditions and limitations contained in this Act.
>
> Sec. 2. There is hereby conferred upon the said Joseph R. Cheesman, and Clifford A. Anderson, their heirs, legal representatives, and assigns all such rights and powers to enter upon lands and to acquire, condemn, appropriate, occupy, possess, and use real estate and other property needed for the location, construction, operation, and maintenance of such bridge and its approaches and terminals as are possessed by bridge corporations for bridge purposes in the State or States in which such real estate and other property are located upon making just compensation therefor, to be ascertained and paid according to the laws of such State or States; and the proceedings therefor shall be the same as in the condemnation and expropriation of property in such State or States.

Sec. 3. The said Joseph R. Cheesman, and Clifford A. Anderson, their heirs, legal representatives, and assigns, is hereby authorized to fix and charge tolls for transit over such bridge, and the rates so fixed shall be the legal rates until changed by the Secretary of War under the authority contained in such Act of March 23, 1906.

Sec. 4. After the date of completion of such bridge, as determined by the Secretary of War, either the State of New Jersey, the State of Pennsylvania, any political subdivision of either of such States within or adjoining which any part of such bridge is located, or any two or more of them jointly, may at any time acquire and take over all right, title, and interest in such bridge and approaches, and interests in real property necessary therefor, by purchase, or by condemnation in accordance with the law of either of such States governing the acquisition of private property for public purposes by condemnation. If at any time after the expiration of twenty years after the completion of such bridge it is acquired by condemnation, the amount of damages or compensation to be allowed shall not include good will, going value, or prospective revenues or profits, but shall be limited to the sum of (1) the actual cost of constructing such bridge and approaches, less a reasonable deduction for actual depreciation in respect to such bridge and approaches, (2) the actual cost of acquiring such interests in real property, (3) actual financing and promotion costs (not to exceed 10 per centum of the sum of the cost of construction of such bridge and approaches and the acquisition of such interests in real property), and (4) actual expenditures for necessary improvements.

Sec. 5. If such bridge shall be taken over and acquired by the States or political subdivisions thereof under the provisions of section 4 of this Act, the same may thereafter be operated as a toll bridge; in fixing the rates of toll to be charged for the use of such bridge, the same shall be so adjusted as to provide as far as possible a sufficient fund to pay for the cost of maintaining, repairing, and operating the

bridge and its approaches, to pay an adequate return on the cost thereof, and to provide a sinking fund sufficient to amortize the amount paid therefor within a period of not to exceed thirty years from the date of acquiring the same. After a sinking fund sufficient to pay the cost of acquiring such bridge and its approaches shall have been provided, the bridge shall thereafter be maintained and operated free of tolls or the rates of toll shall be so adjusted as to provide a fund not to exceed the amount necessary for the proper care, repair, maintenance, and operation of the bridge and its approaches. An accurate record of the amount paid for acquiring the bridge and its approaches, the expenditures for operating, repairing, and maintaining the same, and of the daily tolls collected shall be kept, and shall be available for the information of all persons interested.

Sec. 6. The said Joseph R. Cheesman, and Clifford A. Anderson, their heirs, legal representatives, and assigns, shall, within ninety days after the completion of such bridge, file with the Secretary of War a sworn itemized statement showing the actual original cost of constructing such bridge and approaches, including the actual cost of acquiring interests in real property and actual financing and promotion costs. Within three years after the completion of such bridge the Secretary of War may investigate the actual cost of such bridge, and for such purpose the said Joseph R. Cheesman, and Clifford A. Anderson, their heirs, legal representatives, and assigns shall make available to the Secretary of War all of his records in connection with the financing and construction thereof. The findings of the Secretary of War as to such actual original cost shall be conclusive, subject only to review in a court of equity for fraud or gross mistake.

Sec. 7. The right to sell, assign, transfer, and mortgage all the rights, powers, and privileges conferred by this Act is hereby granted to the said Joseph R. Cheesman, and Clifford A. Anderson, their legal representatives and assigns, and any corporation to which such rights, powers, and privileges

may be sold, assigned, or transferred, or which shall acquire the same by mortgage foreclosure or otherwise, is hereby authorized and empowered to exercise the same as fully as though conferred herein directly upon such corporation.

Sec. 8. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, May 21, 1926.

2. **Amendment to the Burlington-Bristol Bridge Act.** The Joint Resolution of February 10, 1927 (44 Stat., Part 2, 1069), provides as follows:

Chap. 103.—Joint Resolution To amend the Act entitled "An Act granting the consent of Congress for the construction of a bridge across the Delaware River at or near Burlington, New Jersey," approved May 21, 1926.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act granting the consent of Congress for the construction of a bridge across the Delaware River at or near Burlington, New Jersey," approved May 21, 1926, is amended by striking out the name "Clifford A. Anderson" wherever it occurs in such Act and by insertion in lieu thereof the name "Clifford L. Anderson."

Sec. 2. The times for the commencement and completion of the construction of such bridge are hereby extended one and three years, respectively, from the date of the passage of this resolution.

Approved, February 10, 1927.

3. **Second amendment to the Burlington-Bristol Bridge Act.** The Act of Congress of March 7, 1928 (45 Stat. 243), provides as follows:

Chap. 139.—An Act To extend the times for commencing and completing the construction of a bridge across the Delaware River at or near Burlington, New Jersey.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time for commencing and completing the construction of the bridge authorized by the Act of Congress, approved May 21, 1926, as amended by Public Resolution approved February 10, 1927, to be built across the Delaware River at or near Burlington, New Jersey, are hereby extended one and three years, respectively, from the date of approval hereof.

Sec. 2. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, March 7, 1928.

4. **Tacony-Palmyra Bridge Act.** The Act of Congress of January 25, 1927 (44 Stat., Part 2, 1024), provides as follows:

Chap. 56.—An Act Granting the consent of Congress to Tacony-Palmyra Bridge Company to construct, maintain, and operate a bridge across the Delaware River at Palmyra, New Jersey.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby granted to the Tacony-Palmyra Bridge Company, a corporation of the State of New Jersey, its successors and assigns, to construct, maintain, and operate a bridge and approaches thereto across the Delaware River at a point suitable to the interests of navigation between Palmyra, county of Burlington, State of New Jersey, and Tacony, in the city of Philadelphia, county of Philadelphia, State of Pennsylvania, in accordance with the provisions of the Act entitled "An Act to regulate the construction of bridges over navigable waters," approved March 23, 1906, and subject to the conditions and limitations contained in this Act.

Sec. 2. There is hereby conferred upon said Tacony-Palmyra Bridge Company, its successors and assigns, all such rights and powers to enter upon lands and to acquire, condemn, occupy, possess, and use real estate and other property needed for the

location, construction, operation, and maintenance of such bridge and its approaches and terminals, as are possessed by railroad corporations for railroad purposes or by bridge corporations for bridge purposes in the State in which such real estate or other property is situated, upon making just compensation therefor, to be ascertained and paid according to the laws of such State, and the proceedings therefor shall be the same as in the condemnation and expropriation of property in such State.

Sec. 3. The said Tacony-Palmyra Bridge Company, its successors and assigns, is hereby authorized to fix and charge tolls for transit over such bridge, and the rates of toll so fixed shall be the legal rates until changed by the Secretary of War under the authority contained in the Act of March 23, 1906.

Sec. 4. After the completion of such bridge, as determined by the Secretary of War, either the State of New Jersey, the State of Pennsylvania, any political subdivision of either of such States, within or adjoining which any part of such bridge is located, or any two or more of them jointly, may at any time acquire and take over all right, title, and interest in such bridge and its approaches, and any interest in real property necessary therefor, by purchase or by condemnation in accordance with the laws of either of such States governing the acquisition of private property for public purposes by condemnation. If at any time after the expiration of twenty years after the completion of such bridge the same is acquired by condemnation, the amount of damages or compensation to be allowed shall not include good will, going value, or prospective revenues or profits, but shall be limited to the sum of (1) the actual cost of constructing such bridge and its approaches, less a reasonable deduction for actual depreciation in value, (2) the actual cost of acquiring such interests in real property, (3) actual financing and promotion cost, not to exceed 10 per centum of the sum of the cost of constructing the bridge and its approaches and acquiring such interest in real property, and (4) actual expenditures for necessary improvements.

Sec. 5. If such bridge shall be taken over or ac-

quired by the States or political subdivisions thereof as provided in section 4 of this Act, and if tolls are charged for the use thereof, the rates of toll shall be so adjusted as to provide a fund sufficient to pay for the cost of maintaining, repairing, and operating the bridge and its approaches, to pay an adequate return on the cost thereof, and to provide a sinking fund sufficient to amortize the amount paid therefor as soon as possible under reasonable charges, but within a period of not to exceed thirty years from the date of acquiring the same. After a sinking fund sufficient to pay the cost of acquiring the bridge and its approaches shall have been provided, such bridge shall thereafter be maintained and operated free of tolls, or the rates of toll shall thereafter be so adjusted as to provide a fund of not to exceed the amount necessary for the proper care, repair, maintenance, and operation of the bridge and its approaches. An accurate record of the amount paid for acquiring the bridge and its approaches, the expenditures for operating, repairing, and maintaining the same, and of the daily tolls collected shall be kept, and shall be available for the information of all persons interested.

Sec. 6. The said Tacony-Palmyra Bridge Company, its successors and assigns, shall within ninety days after the completion of such bridge file with the Secretary of War a sworn itemized statement showing the actual original cost of constructing such bridge and its approaches, the actual cost of acquiring any interest in real property necessary therefor, and the actual financing and promotion costs. The Secretary of War may, at any time within three years after the completion of such bridge, investigate the actual cost of constructing the same and for such purpose the said Tacony-Palmyra Bridge Company, its successors and assigns, shall make available all of its records in connection with the financing and the construction thereof. The findings of the Secretary of War as to the actual original cost of the bridge shall be conclusive, subject only to review in a court of equity for fraud or gross mistake.

Sec. 7. The right to sell, assign, transfer, and mortgage all the rights, powers, and privileges conferred by this Act, is hereby granted to the said Tacony-Palmyra Bridge Company, its successors and assigns, and any corporation to which or any person to whom such rights, powers, and privileges may be sold, assigned, or transferred, or who shall acquire the same by mortgage foreclosure or otherwise, is hereby authorized and empowered to exercise the same as fully as though conferred herein directly upon such corporation or person.

Sec. 8. The right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, January 25, 1927.

APPENDIX B

EXCERPTS FROM OPINION OF THE SUPREME COURT OF NEW JERSEY

1. Excerpt from R. 2863-2865

Next to be considered is the question of the right of a bridge commission to operate at a profit, and more specifically the right of the Burlington County Bridge Commission to operate for profit the two interstate bridges here involved. A bridge commission is a body both corporate and politic. Its creation by the board of chosen freeholders of a county is authorized by the "Self-Liquidating Bridges Act," R. S. 27: 19-26 *et seq.*, as amended. In many respects it has a standing analagous to that of a municipal corporation and derives its power and authority to act solely from statute, cf. *City of Newark* v. *New Jersey Turnpike Authority*, 7 N. J. 377, 381 (1951). Like a municipal corporation it enjoys a considerable degree of discretion as to the manner in which it carries out the functions committed to it, but unlike "municipal corporations formed for local government" which by Art. IV., Sec. VII, par. 11 of the *Constitution of 1947* are entitled to have statutes con-

cerning them "liberally construed in their favor," the statutory powers of a bridge commission are to be strictly construed and any doubt or ambiguity is to be resolved against it. An examination of the various statutes pertaining to bridge commissions fails to disclose any provision from which it can reasonably be inferred that they have the power to operate bridges for profit. Rather, from the fact that the powers of bridge commissions are spelled out in some detail in the statutes without mention of the right to make a profit and also from the fact that the entire statutory scheme is designed towards making the bridges "self-liquidating," it clearly was not the legislative intent to give bridge commissions such power. For example, N. J. S. A. 27:19-32 pertaining in part to the rate of tolls, specifically states that: "The rate of tolls to be charged for the use of any bridge constructed or purchased under the provisions of this article shall be so fixed and adjusted as to comply with any contract or agreement of the commission relative thereto and, in any event, provide a fund sufficient to pay the interest and principal of any bonds issued under this title, and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridges." No mention whatever is made of providing a profit for the enrichment of a county. Moreover, in view of the fact that a bridge commission is empowered by N. J. S. A. 27:19-28 to acquire intercounty and interstate bridges, it would be unjust to infer that one county could profit at the expense of, and out of property located in part in another county or state. It is not necessary for us to interpret the provision in Section 5 of the two federal acts authorizing the construction of these bridges to the effect that tolls may be charged "to pay an adequate return on the cost thereof." Quite obviously the federal government cannot grant a power to an agency of the state which the state itself has not seen fit to grant. Even an interpretation of the federal acts most favorable to the defendant County would only permit the State to authorize the making of a profit from the operation of the

bridges. It is therefore apparent not only that the Bridge Commission had no authority to make a profit but that the selling syndicate in representing to the Freeholders and the prospective Bridge Commissioners that the County would realize a profit of over $4,000,000 on the operation of the bridges was doing so without any foundation in law for the statements.

2. **Excerpt from R. 2871**

On the basis of the facts set forth herein, and of the law as discussed herein we are of the opinion: . . . (4) The Bridge Commission may not operate the bridges so as to result in a profit to Burlington County.

3. **Excerpt from R. 2878-2879**

(8) The Bridge Commission shall operate the bridges in strict compliance with all applicable statutes; . . .

(10) At such time as the obligations of the Bridge Commission on its bonds shall have been fully met the bridges shall either become toll free or tolls shall be charged to provide a fund not to exceed an amount necessary for the proper care, repair, maintenance and operation of the bridges and their approaches. All funds or other property now owned or hereafter acquired by the Bridge Commission shall be used solely for purposes related to the bridges. If on retirement of the bonds the Bridge Commission shall be succeeded by the Board of Chosen Freeholders or other public body, its successor shall similarly be limited in the use of said funds or property.

(11) The bridges shall not be subject to condemnation or acquisition by the State or any other body or person so long as the bonds of the Bridge Commission remain outstanding and thereafter tolls may not be charged by the Bridge Commission or its successor except as provided in the preceding paragraph.

APPENDIX C

BRIDGE LEGISLATION OF THE SIXTY-NINTH CONGRESS

(page references are to 44 Stat., Part 2)

I. **Other Bridge Statutes With Toll-Base Criteria Containing "Adequate Return" Provisions Comparable to Those Governing the Burlington-Bristol and Tacony-Palmyra Bridges:**

1. Bridge across Mississippi and Ohio R. at Cairo, Ill. (p. 231)
2. Bridge across Ohio R. at or near Louisville (p. 232)
3. Bridge across Colorado R. near Blythe, Cal. (p. 387)
4. Bridge across Mississippi R. at or near Vicksburg (p. 388)
5. Bridge across Mississippi R. at Cape Girardeau, Mo. (p. 390)
6. Bridge across Missouri R. at or near Natchez (p. 392)
7. Bridge across Potomac R. (p. 398)
8. Bridge across Mississippi R. at or near Louisiana, Mo. (p. 399)
9. Bridge across Red R. (p. 533)
10. Bridges across Mississippi and Missouri R. (p. 620)
11. Bridge across Chattahoochee R. at or near Neals Landing, Ga. (p. 706)
12. Bridge across Red R. (p. 733)
13. Bridge across Ohio R. (p. 735)
14. Bridge across Columbia R. (p. 1053)
15. Bridge across Ohio R. (p. 1175)
16. Bridge across Ohio R. at or near Mason, W. Va. (p. 1237)
17. Bridge across Mississippi R. (p. 1240)
18. Bridge across Ohio R. at or near St. Marys, W. Va. (p. 1334)
19. Bridge across Ohio R. (p. 1342)

20. Bridge across Missouri R. (p. 1344)
21. Bridge across Ohio R. at Evansville, Ind. (p. 1384.

II. Bridge Statutes With Toll-Base Criteria Substantially the Same—Except for the Very Important Omission of the "Adequate Return" Provision:

1. Bridge across Red R. near Fulton, Ark. (p. 3)
2. Bridge across Sandusky Bay at or near Bay Ridge, Ohio (p. 402)
3. Bridge across Susquehanna R. (p. 406)
4. Bridge across White R. at Des Arc, Ark. (p. 407)
5. Bridge across Ohio R. near Steubenville (p. 409)
6. Bridge across Susquehanna R. (p. 414)
7. Bridge across Ohio R. at or near Gallipolis, Ohio (p. 535)
8. Bridge across Susquehanna R. (p. 590)
9. Bridge across Elizabeth R. (p. 619)
10. Bridge across Columbia R. (p. 682)
11. Bridge across Red R. at or near Coushatta, La. (p. 683)
12. Bridge across Mississippi R. (p. 694)
13. Bridge across Mahoning R. at Girard, Ohio (p. 696)
14. Bridge across Lake Washington at Seattle, Wash. (p. 738)
15. Bridge across Port Washington Narrows at Bremerton, Wash. (p. 744)
16. Bridge across Pearl R. at or near Edinburg, Miss. (p. 748)
17. Bridge across White R. near Augusta, Ark. (p. 749)
18. Bridge across Missouri R. between Omaha, Neb. and Council Bluffs, Iowa (p. 770)
19. Bridge across Lake Washington at Seattle, Wash. (p. 824)
20. Bridge across Red R. at or near Boyce, La. (p. 1010)
21. Bridge across Mississippi R. at or near Quincy, Ill. (p. 1055)

22. Bridge across Chesapeake Bay (p. 1100)
23. Bridge at or near Cedar Point, Ala. (p. 1242)
24. Bridge across Kanawha R. at or near Henderson, W. Va. (p. 1267)
25. Bridge across Mississippi R. at New Orleans, La. (p. 1270)
26. Bridge across Clinch R. (p. 1271)
27. Bridge across Savannah R. (p. 1273)
28. Bridge across Ohio R. (p. 1337)
29. Bridge across Mount Hope Bay (p. 1391)